

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State WASHINGTON

**REQUIREMENTS FOR ADVANCE DIRECTIVES UNDER STATE PLANS
FOR MEDICAL ASSISTANCE**

The following is a written description of the law of the State (whether statutory or as recognized by the courts of the State) concerning advance directives. If applicable, States should include definitions of living will, durable power of attorney for health care, durable power of attorney, witness requirements, special State limitations on living will declarations, proxy designation, process information and State forms, and identify whether State law allows for a health care provider or agent of the provider to object to the implementation of advance directives on the basis of conscience.

1. Introduction

- a. The Patient Self-Determination Act, as part of OBRA 1990, requires that each state develop a written description of the law of the state concerning advance directives. The following is a summary of Washington law.
- b. Applicable law in this area is primarily statutory. Washington recognizes two types of advance directives: (1) A Directive to Physicians (or "Living Will") and (2) A Durable Power of Attorney for Health Care. The related subjects of informed consent and anatomical gifts will also be summarized.

2. Directives to Physicians

- a. Washington Natural Death Act ("Act") provides for the use of directives to physicians. The pertinent parts are codified at RCW 70.122.010 - 100. Under the Act, a patient may direct that his/her life not be artificially prolonged if he/she is suffering from an incurable injury, disease or illness that has been certified to be terminal, when such measures would only prolong the moment of death.
- b. Two physicians must diagnose and certify in writing that the patient is afflicted with a terminal condition. One of the two physicians must be the attending physician and both must personally examine the patient.

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- c. Before a directive is effectuated, the written certification of the diagnosis shall be attached to the directive and made a permanent part of the patient's medical records. The directives must be in writing, and signed and witnessed by two persons who are not related to the signer by blood or marriage, and who, at the time of signing are not entitled to any portion of the signer's estate by will, codicil or operation of law, or have a claim against the estate. The witness may also not be treating physicians, the physicians' employees, or employees of the health care facility where the signer is a patient.
- d. A directive may be revoked by destroying it with the intent of revoking it. A revocation is effective without regard to competency. A living will may also be revoked verbally or in writing, but the cancellation does not take effect until it is made known to the attending physician. If the person is comatose or is incapable of communicating with the attending physician, the directive shall remain in effect for the duration of the comatose condition or until the patient is able to communicate with the attending physician.
- e. There shall be no criminal or civil liability on the part of any person for failure to act upon a revocation, unless that person has actual or constructive notice of the revocation.
- f. No physician, health facility, or licensed health personnel (acting under the direction of a physician), acting in good faith and within the requirements of the Act shall be held civilly, criminally or professionally liable for withholding or withdrawing life-sustaining procedures.
- g. No physician and no licensed health personnel acting in good faith under the direction of a physician may be held civilly or criminally liable for failing to effectuate a directive. However, if the physician refuses to effectuate the directive, the physician must make a good faith effort to transfer the patient to a physician who will effectuate the directive.
- h. The Act does not authorize mercy killings or other affirmative acts or omissions to end life, other than to permit the natural process of dying. The Act also provides criminal penalties for violation.

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3. Durable Power of Attorney for Health Care

- a. Washington law authorizes a durable power of attorney for health care pursuant to RCW 11.94.010 - 060. The durable power of attorney for health care may specify when and under what circumstances the power of attorney becomes effective.
- b. A durable power of attorney for health care must be in writing and when effective, an "attorney-in-fact" to be responsible for the principal's health care decisions. Unless the attorney-in-fact is a spouse, adult child, or brother or sister, the attorney-in-fact may not be the principal's physician or physician's employee, or the owners, administrators or employees of the health care facility where the principal resides or receives care. A durable power of attorney for health care may be specific or broad in scope with regard to the type of health care decisions to be made. The durable power of attorney for health care does not require witnesses but must be in writing and signed by the principal. The document may be revoked by the principal, a court appointed guardian or by court order.

4. Informed Consent

- a. RCW 7.70.060 - 065 contains Washington law regarding informed consent. Before medical treatment can occur, a physician must obtain informed consent. Information regarding the proposed treatment must be given in a language understandable to the patient. The information must include the nature of the proposed treatment, anticipated results of the treatment, recognized possible alternative forms of treatment and recognized serious possible risks, complications and anticipated benefits involved in the treatment and the recognized possible alternative forms of treatment including non-treatment. Except in certain circumstances (see below), the proposed treatment cannot be given without informed consent.
- b. A patient may also elect not to be informed of the possible risks, benefits and alternatives to the treatment.

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4. Informed Consent (cont.)

- c. In some compelling circumstances, involuntary treatment may be administered. In these instances, health professionals or a judge may determine whether treatment is warranted.
- d. If a patient is incapacitated, informed consent may be obtained from a person authorized by law to make treatment decisions. Such a person or "surrogate" may be, in descending order of priority: (1) an appointed guardian; (2) an individual to whom the patient has given a durable power of attorney for health care; (3) the patient's spouse; (4) children of the patient who are 18 or over; (5) parents of the patient; or (6) the patient's brothers or sisters who are over 18.
- e. The physician seeking informed consent must make a reasonable effort to get authorization from someone in the first or second group. If such a person is not available, authorization may be given by someone in the next group in the order of descending priority. However, no person may provide consent if a person in a higher priority group has refused to give authorization or if there are two or more individuals in the same group and the decision is not unanimous among all available members of that group.
- f. Before giving informed consent, a surrogate decision-maker must make a good faith effort to determine that the patient, if competent, would consent to the proposed treatment. If that is not possible, the surrogate decision-maker may give informed consent to treatment if it is determined that such treatment is in the patient's best interest.

5. Anatomical Gifts

- a. Washington's Anatomical Gift Act, RCW 68.50.340 - 420 provides that persons over 18 of sound mind may give all or any part of their bodies for medical research or transplant purposes.
- b. A spouse, adult child, either parent, an adult brother or sister or guardian (in descending priority, when persons in prior classes are not available at time of death) may also decide to give all or part of the decedent's body for medical research or transplant purposes. This may occur if there was no known opposition by the decedent, or no known opposition by a person in the same or prior class.

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5. Anatomical Gifts (cont.)

- c. An anatomical gift may be made by will or separate document. The document may or may not be delivered to the donee, without affecting the gift's validity. The document must be signed and witnessed by two persons. The document may be amended or revoked orally or in writing, or if made by will, in the same manner as an amendment or revocation of a will under Washington law.

6. Form

RCW 70.122.030(12) provides in part: ...The directive shall be essentially in the following form, but in addition may include other specific directions.

DIRECTIVE TO PHYSICIANS

Directive made this _____ day of _____ (month, year).

I, _____ being of sound mind, willfully, and voluntarily make known my desire that my life shall not be artificially prolonged under the circumstances set forth below, and do hereby declare that:

- a. If at any time I should have an incurable injury, disease, or illness certified to be a terminal condition by two physicians, and where the application of life-sustaining procedures would serve only to artificially prolong the moment of my death and where my physician determines that my death is imminent whether or not life-sustaining procedures are utilized, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally.
- b. In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this directive shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and I accept the consequences from such refusal.
- c. If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy.

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6. Form (cont.)

- d. I understand the full import of this directive and I am emotionally and mentally competent to make this directive.

Signed _____

City, County, and State of Residence

The declarer has been personally known to me and I believe him/her to be of sound mind.

Witness _____

Witness _____